

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16352 of 2014

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Bijay Kumar Singh, son of Sri Mohan Singh, resident of Quarter No.B-151, Buddha Colony, P.S.- Buddha Colony, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna.
4. The Principal Secretary, Parliamentary Affairs Department, Government of Bihar, Patna.
5. The Principal Secretary, Finance Department, Government of Bihar, Patna.
6. Additional Secretary, Department of Labour Resources, Government of Bihar, Patna.
7. The Director, Labour Employment and Training Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate with
Mr. Rajesh Prasad Choudhary
Mr. Rakesh Ranjan

For the Respondent/s : Mr. Rajeev Ranjan Kr. Pandey, SC-29
Mr. Nagendra Sharma, AC to SC-29

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-07-2015

Heard Mr. Y.V. Giri, learned senior counsel appearing
for the petitioner and Mr. Nagendra Sharma, learned Assisting
Counsel to Standing Counsel No.29 for the State.

The petitioner is aggrieved by the order bearing Memo
no.484 dated 16.6.2014 of the State Government in its Department
of Labour Resources, Directorate of Employment and Training
(Employment), Bihar as contained in Annexure-1 as well as the
order of the Chief Secretary bearing Memo No.690 dated 13.8.2014
placed at Annexure-2 passed in purported compliance of the order

of this Court passed in MJC No.1718 of 2014 arising from CWJC No.21839 of 2012, whereby the salary of the petitioner has been fixed at Rs.4,500/- per month and it is further held that Clause-7 of the resolution dated 12.2.1985 shall not be applicable in his case.

It is the argument of Mr. Giri, learned senior counsel appearing for the petitioner that the service conditions of the petitioner as the Chairman of the State Employment Committee stood finalized under the appointment notification bearing Memo No.148 dated 9.4.2002 which referred to a resolution of the State Government bearing No.478 dated 12.2.1985 for determination of the service conditions and are present at Annexures 3 and 11 respectively. The tenure of the State Employment Committee was extended from three years to five years vide notification no.251 dated 28.8.2004 which is present at Annexure-4. It is the contention of Mr. Giri that since the appointment order of the petitioner also determined his service conditions as per the terms present in the resolution dated 12.2.1985, the remuneration admissible against the said post was also to be governed by the said resolution and in particular Clause-7 thereof. Elaborating on the issue he submits that the said resolution dated 12.2.1985 not only enumerates the duties and responsibilities attached to the post of the Chairman, State Employment Committee rather also determines the remuneration



payable to him as manifest from Clause-7. With reference to the order passed by this Court in CWJC No.21839 of 2012 present at Annexure-9 to the writ petition he submits that a Bench of this Court in consideration of the grievance raised by the petitioner required its consideration and disposal by the Chief Secretary, Government of Bihar vide order passed on 14.2.2014 but the respondent-State in its Department of Labour Resources as well as the Chief Secretary while disposing of his grievance have wholly illegally and arbitrarily denied the justful claims of the petitioner by fixing a remuneration which is not in consonance with the resolution dated 12.2.1985. He further submits that the illegality in the action of the respondents can well be ascertained from Clause 2 and 3 of the notification dated 16.6.2014 whereby they have purportedly withdrawn the clause relating to remuneration payable to the Chairman of the State Employment Committee under Clause-7 of the resolution dated 12.2.1985 which is the foundation of the claim of the petitioner. He submits that the Chief Secretary while endorsing the fixation under notification dated 16.6.2014 has held that since the remuneration of the predecessor in the office of the Chairman was fixed as per the salary drawn by the State Minister and even though there is no such notification in relation to the petitioner but going by precedence, the same salary would be

admissible to the petitioner. He submits that the orders seek to alter the service conditions which is impermissible in law.

The arguments of Mr. Giri has been contested by Mr. Nagendra Sharma, learned Assisting Counsel to Standing Counsel No.29 on the anvil that the appointment order dated 9.4.2002 present at Annexure-3 merely refers to the resolution dated 12.2.1985 for determination of duties and responsibilities attached to the post of Chairman but it did not provide that even the remuneration payable against the post would be guided by the notification. He thus submits that in absence of any specific clause in the appointment order relating to remuneration of the petitioner that the same has been determined vide notification dated 16.6.2014 present at Annexure-1 and it is in the light of the said notification that the case of the petitioner has been disposed of by the Chief Secretary vide order passed on 13.8.2014 present at Annexure-2 which suffers from no infirmity. While justifying the non-applicability of Clause-7 of the resolution dated 12.2.1985 in so far as the service condition is concerned, it is submitted that since the said clause was leading to confusion hence to harmonize the situation that it has been held not applicable.

I have heard learned counsel for the parties and I have perused the materials on record.



It is rather unfortunate that a person who was appointed as back as on 9.4.2002 is making rounds of the Court for payment of his justful claim since last more than 13 years. There is no dispute that the service conditions of the petitioner in terms of the appointment order dated 9.4.2002 bearing Memo no.148 present at Annexure-3 was to be governed by the terms and conditions present in the resolution no.478 dated 12.2.1985, a copy of which is present at Annexure-11 to the writ petition. The said resolution while providing for the nature, duties and responsibilities attached to the post of Chairman also in its Clause-7 provided that the Chairman of the State Employment Committee would be entitled to all benefits as admissible to Sri I.N. Thakur, Chairman, Mice Wage Board. A plain reading of the appointment order of the petitioner alongside the resolution dated 12.2.1985 confirms that the terms and conditions governing the post of Chairman, State Employment Committee including the remuneration payable was determined in terms of the resolution dated 12.2.1985, which was conclusive and there could not have been any dispute on this issue. Unfortunately the petitioner had to wait for a decade to obtain an order of this Court for adjudication on his grievance and which has led to a second round litigation as vide the order dated 16.6.2014 present at Annexure-1, the State Government in its Labour Resources



Department has proceeded to determine the remuneration of the petitioner at the rate of Rs.4,500/- per month and vide Clause-3 of the order it is further provided that all the terms and conditions present in the resolution dated 12.2.1985 in so far as duties and responsibilities attached to the post of Chairman, State Election Committee, shall apply to the case of the petitioner except clause-7.

A plain reading of the notification so issued to the Labour Resources Department as contained in Annexure-1 leaves no room for confusion that the department while determining the remuneration of the petitioner has chosen to withdraw a service condition which now binds the department in view of the terms finalized under the appointment order issued on 9.4.2002. A service condition is sought to be withdrawn by the respondents retrospectively and which is impermissible in law.

When the appointment notification of the petitioner dated 9.4.2002 consciously refers to the resolution dated 12.2.1985 on the issue of duties and responsibility without any rider then it applies to the service conditions as a whole and would be inclusive of the remuneration payable against the post as well. The said contract having existed for last more than a decade, the State Government in its Labour Resources Department while retaining other terms and conditions of the resolution dated 12.2.1985 have



by the impugned notification as contained in Annexure-1 illegally held that Clause-7 thereof would not be applicable to the case of the petitioner and the reasons are missing. The order of the Chief Secretary proceeds to justify such action by holding that the predecessor in the office of the Chairman of the State Employment Committee was paid the said remuneration as payable to a State Minister. In my opinion, in view of the clear stipulation in the appointment order as contained in Annexure-3, it becomes irrelevant as to what was paid to the predecessor of the petitioner rather the entitlement of the petitioner flows from the terms and conditions of his appointment order and which has to be read in juxtaposition with the conditions present in the resolution dated 12.2.1985 referred to in the appointment order.

Unfortunately the petitioner even while praying for payment of salary at the rate at which Shri I.N. Thakur, the Chairman of the Mice Wage Board was being paid as per Clause-7 of the resolution dated 12.2.1985, is not in a position to inform as to what was the exact salary of Shri I.N. Thakur.

Mr. Giri, learned senior counsel appearing for the petitioner with reference to paragraph 12 of the writ petition submitted that it is specifically stated by the petitioner and not controverted that Shri I.N. Thakur while holding the post of

Chairman, Mice Wage Board was drawing the pay-scale as admissible in the rank of Chief Secretary, Government of Bihar.

Be that as it may, once the appointment order of the petitioner dated 9.4.2002 (Annexure-3) refers to the resolution dated 12.2.1985 (Annexure-11) while determining the service conditions, it binds itself also on the issue of remuneration as provided in Clause-7 of the resolution dated 12.2.1985 and the State has to make payment to the petitioner the same salary as was being paid to Shri I.N. Thakur as the Chairman of Mice Wage Board. This service contract cannot be altered retrospectively by the respondents and they are bound under the terms and conditions reflected in the appointment notification dated 9.4.2002 read with the resolution dated 12.2.1985.

For the reasons aforementioned the notification dated 16.6.2014 determining the remuneration of the petitioner present at Annexure-1 as well as the consequential order passed by the Chief Secretary bearing Memo No.690 dated 13.8.2014 cannot be upheld and are accordingly set aside and the Chief Secretary/Labour Secretary or the authority concerned is directed to ensure the remuneration payable to the petitioner strictly in terms of Clause 7 of the resolution dated 12.2.1985 which finds reference in the appointment order of the petitioner at Annexure-3. The payment of

salary of the petitioner and other benefits attached thereto should be made to him within a period of three months from the date of receipt/production of a copy of this order.

This writ petition is allowed.

(Jyoti Saran, J)

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